

Exhibit 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

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VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

1
2 A P P E A R A N C E S:

3
4 FOR THE OFFICIAL COMMITTEE
5 OF UNSECURED CREDITORS:

6 KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP

7 1177 Avenue of the Americas

8 New York, New York 10036

9 BY: PHILIP S. KAUFMAN, ESQ.

10 pkaufman@kramerlevin.com

11 MICHAEL MELLIN, ESQ.

12 mmellin@kramerlevin.com

13 SARA GRIBBON
14

15 FOR THE DEBTORS:

16 MORRISON & FOERSTER, LLP

17 1290 Avenue of the Americas

18 New York, NY 10104-0050

19 BY: ANTHONY PRINCI, ESQ.

20 aprinci@mofo.com

21 ARIEL RUIZ, ESQ., (P.m. session)

22 afr1@mofo.com
23
24
25

A P P E A R A N C E S: (Cont'd.)

FOR THE AD HOC GROUP OF
JUNIOR SECURED NOTEHOLDERS:

WHITE & CASE, LLP
1155 Avenue of the Americas
New York, New York 10036
BY: HARRISON DENMAN, ESQ.

hdenman@whitecase.com

FOR ALLY FINANCIAL INC.:

KIRKLAND & ELLIS, LLP
655 Fifteenth Street, N.W.
Washington D.C. 20005
BY: PATRICK M. BRYAN, ESQ.

patrick.bryan@kirkland.com

FOR WELLS FARGO:

ALSTON & BIRD, LLP
90 Park Avenue, 12th Floor
New York, New York 10016
BY: WILLIAM HAO, ESQ.

william.hao@alston.com

A P P E A R A N C E S: (Cont'd.)

FOR MBIA:

CADWALADER, WICKERSHAM & TAFT, LLP

One World Financial Center

New York, New York 10281

BY: JASON JURGENS, ESQ.

jason.jurgens@cwt.com

WILLIAM NATBONY, ESQ. (P.m. session)

bill.natbony@cwt.com

FOR THE EXAMINER:

CHADBOURNE & PARKE, LLP

30 Rockefeller Plaza

New York, New York 10112

BY: ROBERT KIRBY, ESQ.

rkirby@chadbourne.com

FOR THE LAW DEBENTURE:

SEWARD & KISSEL, LLP

One Battery Park Plaza

New York, New York 10004

BY: DANIEL GUZMAN, ESQ.

guzman@sewkis.com

A P P E A R A N C E S: (Cont'd.)

FOR THE U.S. BANK:

SEWARD & KISSEL, LLP

One Battery Park Plaza

New York, New York 10004

BY: LAURIE BINDER, ESQ.

binder@sewkis.com

FOR THE POTENTIAL OBJECTOR FGIC:

JONES DAY

555 South Flower Street, 15th Floor

Los Angeles, California 90071

BY: RICHARD L. WYNNE, ESQ.

rlwynne@jonesday.com

HOWARD F. SIDMAN, ESQ. (P.m. session) (New York)

hfsidman@jonesday.com

MICHAEL DAILEY, ESQ. (New York)

mjdailey@jonesday.com

A P P E A R A N C E S: (Cont'd):

FOR BANK OF NEW YORK MELLON:

DECHERT, LLP

1095 Avenue of the Americas

New York, New York 10036

BY: REBECCA KAHAN, ESQ.

rebecca.kahan@dechert.com

FOR ALLY FINANCIAL:

CARTER LEDYARD & MILBURN, LLP

2 Wall Street

New York, New York 10005

BY: AARON CAHN, ESQ.

cahn@clm.com

FOR WILMINGTON TRUST:

CLEARY, GOTTlieb, STEEN & HAMILTON, LLP

One Liberty Plaza

New York, New York 10006

BY: MOIRA HEIGES, ESQ.

mheiges@cgsh.com

A P P E A R A N C E S:

FOR THE STEERING COMMITTEE INVESTORS:

GIBBS & BRUNS, LLP

1100 Louisiana, Suite 5300

Houston, Texas 77002

BY: DAVID SHEEREN, ESQ.

dsheeren@gibbsbruns.com

KATHY D. PATRICK, ESQ. (P.m. session)

kpatrick@gibbsbruns.com

FOR THE RMBS STEERING COMMITTEE:

ROPES & GRAY, LLP

1211 Avenue of the Americas

New York, New York 10036-8704

BY: KEITH WOFFORD, ESQ.

keith.wofford@ropesgray.com

PRESENT:

TRICIA DENNIS, Ally Financial

DEREK WITTE, Talcott Franklin (telephone)

CARLOS KING, Videographer

1 TIMOTHY DEVINE

2 Did you meet that day with
3 Mr. Solomon?

4 A. I don't remember.

5 Q. Do you recall discussing with
6 Mr. Solomon on or about October 19th,
7 2011, an approach for dealing with
8 Ms. Patrick?

9 A. Yes.

10 Q. Do you recall who else was
11 present besides yourself and Mr. Solomon
12 on that occasion?

13 A. No.

14 Q. Do you recall what was
15 discussed?

16 A. Yes, in general terms.

17 Q. Please tell me everything you
18 recall about that discussion.

19 MR. BRYAN: I'm going to object
20 and advise the witness not to answer
21 to the extent that he was advising his
22 client or having discussions with
23 Mr. Solomon that would constitute
24 attorney-client communications.

25 MR. KAUFMAN: Are you

1 TIMOTHY DEVINE

2 instructing him not to answer?

3 MR. BRYAN: As your -- your
4 question is now formed, yes.

5 Q. What was discussed at the
6 meeting you had?

7 MR. BRYAN: Same objection. You
8 are asking him to disclose his advice
9 to, and conversations, with
10 Mr. Solomon.

11 MR. KAUFMAN: So you are just
12 instructing him not to answer? I just
13 want that clear.

14 MR. BRYAN: Yes. I'm
15 instructing him not to answer.

16 MR. KAUFMAN: Fine. I don't
17 agree with it but we will move on.

18 Q. As a result of the meeting was
19 an approach formulated for how to respond
20 to Ms. Patrick?

21 A. I don't recall.

22 Q. Whatever approach may or may not
23 have been formulated were you given any
24 responsibility in connection with dealing
25 with Ms. Patrick?

1 TIMOTHY DEVINE

2 A. I don't remember.

3 Q. Finally, you said you would
4 share step-by-step plan for interacting
5 with her. Did you do that?

6 MR. PRINCI: Objection as to
7 form.

8 A. I don't remember having written
9 the e-mail. So...

10 Q. Whether or not you remember
11 writing the e-mail, Mr. Devine, following
12 December 7, did you share with those to
13 whom -- those who were shown as having
14 been the recipients of your e-mail the
15 step-by-step plan for interacting with
16 Ms. Patrick?

17 MR. BRYAN: Objection to form.

18 A. I may have.

19 Q. What was your plan at that
20 point?

21 MR. BRYAN: Objection and I
22 would instruct the witness not to
23 reveal any advice or counsel given to
24 his client on the subject.

25 A. I'm not going to share with you

1 TIMOTHY DEVINE

2 what advice I gave to my client.

3 MR. KAUFMAN: Let's mark as the
4 next exhibit what appears to be a
5 notice of a meeting, the subject of
6 which is R&W and PLS expectations for
7 CCAR 2012. Attached to which is a
8 multipage document dated January 4,
9 2011. The Bates numbers extend from
10 Ally PEO 0028776 to 81.

11 (9019 Exhibit 123, notice of a
12 meeting with attached multipage
13 document dated January 4, 2011, Bates
14 Ally PEO 0028776 to 81, marked for
15 identification, as of this date.)

16 MR. BRYAN: Phil, I don't object
17 to your use of the exhibit but I ask
18 that it not be published. There are
19 parties in this room that have not
20 agreed to the protective order,
21 therefore they are not entitled to PEO
22 information. So you can use it with
23 the witness but please do not publish
24 it on the screen.

25 MR. KAUFMAN: Okay. We are not

1 TIMOTHY DEVINE

2 Q. You have seen these documents
3 before, haven't you?

4 A. As I said, I don't remember in
5 particular seeing this document.

6 Q. Do you know who prepared the
7 document?

8 A. No.

9 MR. KAUFMAN: Let's mark as the
10 next exhibit an e-mail chain that runs
11 from December 7, 2011 to December 15,
12 2007. This one has Bates number Ally
13 PEO 0042503. So I ask that it not be
14 published on the screen.

15 (9019 Exhibit 124, e-mail chain
16 that runs from December 7, 2011 to
17 December 15, 2007, Bates Ally PEO
18 0042503, marked for identification, as
19 of this date.)

20 MR. BRYAN: Thank you.

21 Q. Do you have this document in
22 front of you?

23 A. Yes.

24 Q. And did you send the e-mail at
25 the top of the chain on December 15, 2011?

1 TIMOTHY DEVINE

2 A. It looks like I did.

3 Q. And did you send that e-mail
4 after receiving the communication from
5 Ms. Patrick's firm forwarding draft
6 confidentiality and tolling agreements?

7 A. It looks like I did. I don't
8 remember days of the week in December of
9 2011.

10 Q. The e-mail -- the e-mails
11 underneath yours reflect that Mr. Sheeren
12 sent draft confidentiality and tolling
13 agreements to Ms. Hamzephour, she
14 forwarded it to you FYI and then you
15 responded, right?

16 A. Yeah. I don't see any
17 attachment, unless I'm missing a page, to
18 Exhibit 124. I just see what appears to
19 be a cover e-mail.

20 Q. I'm aware. We -- we looked at
21 that document, those documents before.
22 This is a continuation of the e-mail chain
23 that we looked at earlier.

24 In any event, am I correct,
25 Mr. Devine, that looking at this you

1 TIMOTHY DEVINE

2 received a copy of Mr. Sheeren's e-mail to
3 Ms. Hamzephour who sent it to you FYI?

4 A. Are you referring back to
5 Exhibit 122?

6 Q. No. I'm referring to this
7 exhibit.

8 A. Oh, well, as I said, there's
9 nothing attached. So if you are asking me
10 to talk about what is attached, I can only
11 read --

12 Q. I wasn't. I wasn't.

13 A. Okay, sorry.

14 Q. I didn't ask you anything about
15 what was attached.

16 MR. BRYAN: Why don't you just
17 rephrase the question or restate it.

18 Q. In your e-mail, Mr. Devine, you
19 said "Pursuant to our plan I will reach
20 out to Kathy Patrick by e-mail letting her
21 know that Tammy has forwarded me the
22 correspondence and asked me to follow up.
23 First step, requesting confirmation of her
24 representation by clients."

25 You wrote that, correct?

1 TIMOTHY DEVINE

2 A. Yeah, that looks like I wrote
3 that, yes.

4 Q. And when you said, "First step
5 requesting confirmation of her
6 representation by clients," what -- what
7 is it that you were referring to? You
8 want to know the scope of her
9 representation and the identity of her
10 clients?

11 A. This e-mail looks to me like an
12 e-mail that I would have written to Tammy
13 Hamzephour, who was general counsel at
14 that time for the ResCap entities. And it
15 appears to include an understanding as to
16 what my role would be in connection with
17 what Tammy asked me to do. That's what it
18 appears to reflect.

19 Q. When you said "pursuant to our
20 plan," what plan was that?

21 A. The -- the discussion there and
22 the plan that's referred to would reflect
23 a plan that the lawyers had advised and
24 recommended to the client and had
25 authority from the client to pursue. So

1 TIMOTHY DEVINE

2 I'm not going to talk about what the
3 contents of the plan are.

4 Q. Whatever the contents were, it's
5 part of the same plan that was agreed upon
6 back in October between you and
7 Mr. Solomon, isn't it?

8 MR. BRYAN: Objection to form.

9 Also instruct the witness not to
10 answer to the extent he would disclose
11 communications with Mr. Solomon.

12 MR. KAUFMAN: I wasn't asking
13 for -- for the contents. I just
14 wanted to know whether it's part of
15 the same plan.

16 A. I'm not going to tell you about
17 the contents of what plan or plans the
18 client or clients may have been pursuing
19 at my advice.

20 Q. So although this document was
21 produced to us and I'm asking you about
22 something that you wrote in it, namely
23 pursuant to our plan, you are telling me
24 you are not going to explain what plan you
25 were referring to there?

1 TIMOTHY DEVINE

2 MR. BRYAN: You know that
3 production of a document has nothing
4 to do with where to draw the line on
5 attorney-client communications.
6 Mr. Devine is not going to disclose
7 his communications with his clients
8 and the legal advice he provided.

9 MR. KAUFMAN: Okay.

10 Q. In any event, you said the first
11 step was to get confirmation of
12 Ms. Patrick's representation, right?

13 A. That's what the e-mail reflects.

14 Q. And you were the one who was
15 coordinating that effort; is that correct?

16 MR. BRYAN: Objection to form.

17 A. I had been asked to interface
18 with Kathy Patrick.

19 Q. And did you follow up and
20 request that information from Ms. Patrick?

21 A. I don't remember doing so but I
22 presume that I did. It looks here that
23 Tammy asked me to do that and I was doing
24 that.

25 Q. Do you have some specific

1 TIMOTHY DEVINE

2 recollection of Ms. Hamzephour asking you
3 to do that, Mr. Devine, or are you just
4 assuming that as you sit here today?

5 MR. BRYAN: Objection to form.

6 A. Yeah, the trouble with answering
7 that question is we are going to get into
8 conversations that we had amongst counsel
9 on behalf of the client. So I'm not going
10 to answer it.

11 MR. KAUFMAN: I'd like to go off
12 the record.

13 THE VIDEOGRAPHER: The time is
14 11:02 a.m. and we are off the record.

15 (Whereupon, there is a recess in
16 the proceedings.)

17 THE VIDEOGRAPHER: The time is
18 11:07 a.m. and we are back on the
19 record.

20 Q. Do you have a specific
21 recollection of Ms. Hamzephour asking you
22 to reach out to Ms. Patrick by e-mail,
23 letting her know that you had received the
24 correspondence that Mr. Sheeren had
25 forwarded?

1 TIMOTHY DEVINE

2 A. I don't have that specific
3 recollection.

4 MR. KAUFMAN: Let's mark as the
5 next exhibit a December 19, 2011,
6 e-mail from Linda Rosten to Kathy
7 Patrick showing a copy to you. And
8 attached to that is a letter dated
9 December 19, 2011 from Mr. Devine to
10 Ms. Patrick.

11 (9019 Exhibit 125, December 19,
12 2011 e-mail from Linda Rosten to Kathy
13 Patrick with attached letter dated
14 December 19, 2011 from Mr. Devine to
15 Ms. Patrick, marked for
16 identification, as of this date.)

17 MR. BRYAN: This is 125?

18 THE WITNESS: Thank you.

19 THE COURT REPORTER: Yes.

20 Q. Looking at the second page of
21 the exhibit, Mr. Devine, did you write
22 that letter to Ms. Patrick?

23 A. It looks like I did, yeah.

24 Q. And this was your request for
25 confirmation of her firm's representation

1 TIMOTHY DEVINE

2 Attached to which is a draft
3 confidentiality agreement.

4 MR. PRINCI: Is this Exhibit
5 136?

6 THE COURT REPORTER: Yes.

7 (9019 Exhibit 136, e-mail from
8 Mr. Devine to Ms. Patrick dated
9 April 16, 2012, with attached draft
10 confidentiality agreement, marked for
11 identification, as of this date.)

12 A. Thank you.

13 Q. Looking at the document we just
14 marked, did you send this e-mail to
15 Ms. Patrick with the attached draft on
16 April 16, 2012?

17 A. Yes. It looks like that's
18 exactly what I did.

19 Q. Let me show you the document
20 that has been marked previously as
21 Exhibit 76, which is an e-mail chain on
22 April 17, 2012. And let me direct your
23 attention to the e-mail at the top of the
24 first page, the one from you to Gary Lee
25 and Tammy Hamzephour at 9:57 a.m.

1 TIMOTHY DEVINE

2 Do you see that?

3 A. Sorry. Say that again, please.

4 Q. The e-mail at the top of the

5 first page of the exhibit from you to

6 Mr. Lee and Ms. Hamzephour at 9:57 a.m.

7 Do you see that?

8 A. From me -- at the top of the

9 first page?

10 Q. Correct.

11 A. Yes.

12 Q. Did you send that e-mail?

13 A. It looks like I do.

14 Q. And your e-mail reported on a
15 conversation you had with Mr. Lee the day
16 before, was that correct?

17 A. Yes.

18 Q. And one of the things you had
19 talked about with Mr. Lee was whether to
20 include a dollar figure or dollar figures
21 for a potential contribution from AFI in a
22 presentation to Ms. Patrick; is that
23 correct?

24 A. Yes.

25 Q. And you said that you didn't

1 TIMOTHY DEVINE

2 think a potential dollar range should be
3 shared with Kathy Patrick at that point;
4 is that correct?

5 A. Yes.

6 Q. Why not? Why did you think that
7 a dollar figure should not be shared with
8 her?

9 A. Are you asking me what I thought
10 or what I said to Gary and Tammy about
11 what I thought? Because if you want to
12 know my answer, I can answer the second
13 one.

14 Q. Answer the second one.

15 A. Okay. What I said to Gary and
16 Tammy was that the business hasn't gotten
17 to an Ally Financial, Inc. number yet.
18 Meaning AFI and ResCap have not come to an
19 understanding as to the amount that the
20 parent AFI and the debtors would agree to
21 in their separate negotiations.

22 Q. Are you finished?

23 A. Yeah.

24 Q. You also said "Can always share
25 with her at next round of discussion."

1 TIMOTHY DEVINE

2 What made you think that at the next round
3 of discussion you'd have such a figure to
4 share with her?

5 A. I don't remember in particular
6 but as I understood it, those negotiations
7 were going on and if they had arrived at a
8 number and an agreement at a number, then
9 we would have been able to share it with
10 Kathy Patrick.

11 Q. Let me show you the document
12 that's been marked previously as
13 Exhibit 79, which are e-mails between
14 yourself and Ms. Hamzephour.

15 Did you send the e-mail at the
16 bottom of this exhibit to Ms. Hamzephour
17 on April 23, 2012?

18 A. That's what it looks like, yes.

19 Q. And am I correct that this
20 e-mail was in preparation for an upcoming
21 meeting with Kathy Patrick?

22 A. Just one moment. Let me refresh
23 my memory. Yes, I think that's right in
24 the timeline.

25 Q. And specifically this was about

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.
3 I'm asking you to tell me at the time that
4 you were preparing to provide this
5 waterfall presentation to Ms. Patrick in
6 connection with proposed settlement with
7 her, wasn't it your understanding that AFI
8 in return for whatever contribution it
9 would be making to that settlement was
10 going to require releases from both the
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in
13 response. One, I wasn't preparing the
14 waterfall.

15 Two, we were not negotiating,
16 Kathy Patrick and me -- Kathy Patrick and
17 I with regard to whether or not the 750
18 would be consideration for anything that
19 the debtor received in connection with the
20 resolution of a debtor and Kathy Patrick
21 settlement agreement.

22 Q. Weren't those things all being
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated
25 with Kathy Patrick.

1 TIMOTHY DEVINE

2 Q. I understand that. But in order
3 to make a settlement with her there had to
4 be some contribution from AFI, right?

5 MR. PRINCI: Object to form.

6 A. You'd have to ask Kathy Patrick
7 what she was looking for in that regard.

8 Q. What was the point of including
9 a \$750 million number as a contribution
10 from AFI in a waterfall presentation to
11 Ms. Patrick if it wasn't understood that
12 in order to make any settlement there was
13 going to have to be a contribution from
14 AFI?

15 MR. BRYAN: Objection to form.

16 MR. PRINCI: Objection as to
17 form.

18 A. Now I understand your question.
19 So as I understand it at the time the
20 waterfalls, and I'm trying to remember
21 this, I don't -- there's no attachment to
22 the exhibit, but I think that the
23 waterfalls included 0 contribution from
24 Ally up to 750 million contribution from
25 Ally. And if you are asking me what was

1 TIMOTHY DEVINE

2 ResCap trying to get done at that time, I
3 understood from Tammy Hamzephour and Gary
4 Lee that ResCap was trying to give Kathy
5 Patrick a hypothetical fully sort of
6 caveated vision of some possible scenarios
7 in the event that they struck a deal, that
8 is, ResCap and Kathy Patrick, in
9 connection with a ResCap filing and an
10 allowed claim and so on. And without --
11 without -- Kathy Patrick at that time had
12 been duly informed that there was a
13 potential for an Ally and ResCap
14 settlement which would have or could have
15 included some contribution by Ally into
16 the estate. And so she was trying to
17 understand what potential such a
18 contribution, either from 0 up to 750,
19 would mean for her clients as she
20 evaluated for her part the -- the
21 settlement that was being negotiated
22 between ResCap and Kathy Patrick.

23 Q. And you understood, didn't you,
24 that if AFI were to make a contribution
25 towards that settlement it was going to

1 TIMOTHY DEVINE

2 require releases both from the R&W
3 claimants as well as from ResCap?

4 MR. BRYAN: Object to form.

5 A. So if -- if I understand your
6 question, what I communicated to Kathy
7 Patrick was that in connection with the
8 settlement agreement she was trying to
9 reach with the debtor, for which she
10 sought Ally's support and assurance that
11 Ally wouldn't object to it, Ally would
12 seek a release -- Ally would seek the
13 support of her clients of the plan that
14 was being negotiated between ResCap and
15 Ally at the time.

16 Q. And that plan would include
17 releases both from third-party claimants
18 such as her clients and ResCap, right?

19 A. The plan being negotiated
20 between ResCap and Ally?

21 Q. Yes.

22 A. The plan being negotiated
23 between ResCap and Ally would include a
24 debtor release as well as a provision for
25 third-party nonconsensual releases, that's

1 TIMOTHY DEVINE

2 correct.

3 Q. Okay.

4 MR. KAUFMAN: Let's mark as the
5 next exhibit an e-mail on April 24,
6 2012, from Mr. Devine.

7 (9019 Exhibit 137, WITHDRAWN,
8 marked for identification, as of this
9 date.)

10 Q. Looking at the document we've
11 just marked, Mr. Devine, did you send this
12 e-mail on April 24th?

13 MR. BRYAN: Again, Phil, can you
14 represent that this was not on our
15 clawback list?

16 MR. KAUFMAN: I don't have your
17 list in front of me, Patrick.

18 MR. BRYAN: I believe this one
19 plainly is.

20 MR. KAUFMAN: I don't -- you
21 believe this is on your clawback list?

22 MR. BRYAN: I do.

23 MR. KAUFMAN: Do you have a copy
24 of your list?

25 MR. BRYAN: We can take a break

1 TIMOTHY DEVINE

2 discussion do you recall with
3 Mr. DeBrunner, Mr. Mackey and Mr. Kushman,
4 wasn't there discussion of a \$3 billion
5 range as one possible disclosure?

6 MR. BRYAN: Objection to form.

7 A. I don't recall that.

8 Q. You don't recall that. Okay.

9 What do you recall of the discussion you
10 had with Mr. Mackey, Mr. DeBrunner and
11 Mr. Kushman relating to the language and
12 final pro- -- finalized proposed range
13 that was included in the 10-Q?

14 MR. BRYAN: Objection. He's not
15 going to disclose what advice he gave
16 to the client regarding these
17 disclosures.

18 MR. KAUFMAN: Okay. Let's mark
19 as the next exhibit an e-mail chain on
20 April 27, 2012 -- I'm sorry. I see
21 this has already been marked.

22 Q. Let -- let me show you the
23 document that has previously been marked
24 as Exhibit 44.

25 A. Thank you.

1 TIMOTHY DEVINE

2 Q. Focusing on the e-mail that
3 starts on the bottom of the first page and
4 continues over to the second. That's an
5 e-mail you sent to Mr. Solomon and others
6 on April 27th, correct?

7 A. Just a moment, please.

8 Okay. Sorry, I'm ready to
9 answer your question.

10 Q. Is that an e-mail you sent to
11 Mr. Solomon and others on April 27th?

12 A. Yes.

13 Q. And you reported in your e-mail
14 a conversation you had just had with
15 Ms. Patrick, correct?

16 A. Yes.

17 Q. And was that an accurate summary
18 of your conversation with Ms. Patrick?

19 A. I assume it was.

20 Q. The next e-mail up is from
21 Mr. Solomon at 8:48 p.m. Did you receive
22 that e-mail?

23 A. Yes, it looks like I did.

24 Q. And then you responded to
25 Mr. Solomon at 8:50 p.m., correct?

1 TIMOTHY DEVINE

2 A. Yes.

3 Q. And the last line of your
4 response you said "Lots to do and have to
5 manage all client expectations since KP's
6 clients will take several hacks at us."

7 To what clients were you
8 referring?

9 A. I assume I was referring to the
10 clients that KP had identified.

11 Q. Okay. When you said "have to
12 manage all client expectations," which
13 client or clients were you talking about
14 there?

15 A. I was probably referring to the
16 ResCap client as well as the Ally client.

17 Q. And how did you believe those
18 expectations had to be managed?

19 MR. BRYAN: Objection to form.

20 MR. KAUFMAN: Let me withdraw
21 it.

22 Q. What expectations of those
23 clients did you believe had to be managed?

24 A. I'm trying to put myself back in
25 time. It wasn't clear to me that Kathy

1 TIMOTHY DEVINE

2 Patrick and her clients were going to --
3 it wasn't clear to me at that time that a
4 deal was going to get done. And I assume
5 that's what I meant by having to manage
6 client expectations with regard to whether
7 a deal was going to get done or not.

8 Q. Okay. And how did you believe
9 those expectations concerning whether a
10 deal could get done needed to be managed?

11 MR. BRYAN: Objection to form.

12 A. I'm going to try and understand
13 your question better but would you please
14 clarify.

15 Q. You said "have to manage all
16 client expectations." And you explained
17 that those expectations had to do with
18 whether or not a deal with Ms. Patrick's
19 clients could get done, right?

20 A. That's my best memory of what I
21 was talking about. I confess I don't
22 remember exactly what I was talking about.

23 Q. How did you propose to manage
24 those expectations?

25 A. How in terms of who I'd speak

1 TIMOTHY DEVINE

2 with or how in terms of what actions would
3 be taken?

4 Q. Both.

5 A. I don't remember.

6 Q. Who was going to do the
7 managing, you?

8 MR. BRYAN: Object to form.

9 A. I -- I think the client
10 expectations, you can see who is on the
11 e-mail here. You've got Gary Lee and
12 you've got Tammy Hamzephour. So I assume
13 that they would be managing whatever
14 expectations the ResCap client had. And
15 we have got Bill Solomon, Rick Cieri and
16 Ray Schrock who together would be managing
17 client expectations at Ally.

18 Q. What client were you on?

19 MR. BRYAN: Objection to form.

20 Q. Were you the lawyer for the
21 situation or were you on the Ally side?

22 MR. PRINCI: Objection as to
23 form.

24 MR. BRYAN: Objection to form.

25 A. With regard to the April 27 --

1 TIMOTHY DEVINE

2 with regard to finalizing the deal with
3 Kathy Patrick in the role of reporting
4 back here in the e-mail Friday, April 27
5 it looks like 8:00 at night, I was
6 reporting back to Ally and ResCap teams
7 with regard to the conversation with Kathy
8 Patrick. It could be that Gary Lee was
9 having conversations at the same time, I
10 don't know. But what I reported was that
11 I had spoken with her and it looked like
12 essentially a pretty positive and upbeat
13 status report at that time.

14 Q. Okay.

15 A. So --

16 Q. I was referring to your
17 statement that, "have to manage all client
18 expectations." I'm trying to figure out
19 which client or clients were you managing?

20 A. I wasn't managing --

21 MR. BRYAN: Asked and answered.

22 A. -- any client.

23 Q. So everyone else that you
24 e-mail -- sent your e-mail to was doing
25 some managing but you weren't doing any,

1 TIMOTHY DEVINE

2 is that what you're saying?

3 MR. BRYAN: Objection to form.

4 MR. PRINCI: Objection as to
5 form.

6 A. I'm saying I wasn't managing any
7 client. If you're talking about managing
8 expectations --

9 Q. I'm talking managing
10 expectations.

11 A. Oh, that's different.

12 Q. Whose cli- -- which client
13 expectations were you managing?

14 A. I was --

15 MR. BRYAN: Objection to form.

16 A. I was providing information to
17 Tammy and Gary for their advice to the
18 ResCap clients and I was providing
19 information to Rick and Ray and Bill with
20 regard to the Ally client. But clearly by
21 that point I would have been participating
22 in attorney-client discussions with the
23 Ally client with regard to the Kathy
24 Patrick discussions.

25 MR. KAUFMAN: Let's mark as the

1 TIMOTHY DEVINE

2 that took place outside of my presence.

3 Q. You said our notes match --

4 A. So --

5 Q. Didn't that indicate your
6 agreement with the summary he provided to
7 you?

8 MR. BRYAN: Object to form.

9 A. Yeah. So as I recall during
10 those days, as I said, there were times
11 when I was talking with Kathy Patrick and
12 there were times when Gary Lee was talking
13 to Kathy Patrick. So it's just as
14 reasonable in the misty fog of my memory
15 right now to understand our notes match to
16 describe a separate conversation that I
17 had with Kathy Patrick with the agreement
18 as Gary Lee describes it here.

19 It's possible that we were in
20 the same meeting and that that's what that
21 e-mail means. It's also possible that we
22 were in separate meetings and we were
23 comparing notes as to our understanding of
24 what KP was proposing.

25 Q. Okay. In any event, your

1 TIMOTHY DEVINE

2 understanding of the conversations with
3 Ms. Patrick matched the summary that
4 Mr. Lee provided in the e-mail to you; is
5 that correct?

6 A. That's correct.

7 Q. Okay. The five points listed by
8 Mr. Lee were the essential terms of the
9 deal you were discussing with Ms. Patrick
10 at that time; is that correct?

11 A. No.

12 Q. No. No?

13 A. No.

14 Q. Oh, okay. In point 4 of his
15 e-mail, Mr. Lee wrote, "The KP group will
16 enter into a plan support agreement which
17 would support the DIP, sale, sale process,
18 servicing, shared services and plan
19 releases provide that Ally contributes no
20 less than X dollars in cash."

21 Do you see that?

22 A. I see that, yes.

23 Q. And the plan releases that you
24 understood Mr. Lee was referring to there
25 were third-party releases to AFI and a

1 TIMOTHY DEVINE

2 you see that?

3 A. I see that.

4 Q. He just has an X.

5 A. Yes. I see that that number 4
6 refers to X dollars in cash.

7 Q. As of May 4 was the amount of
8 AFI's contribution still open with respect
9 to Ms. Patrick?

10 A. I don't -- I don't remember.

11 Q. As of May 4 how much was
12 Ms. Patrick demanding from AFI to enter
13 into a plan support agreement as part of
14 her settlement?

15 MR. PRINCI: Objection as to
16 form.

17 MR. BRYAN: Objection to form.

18 A. Kathy Patrick wasn't demanding a
19 certain amount of money from AFI into the
20 estate.

21 Q. Had she indicated to you that
22 the amount of AFI's contribution was
23 unimportant to her?

24 A. Had she indicated that it was
25 unimportant what AFI put in the estate?

1 TIMOTHY DEVINE

2 Q. Yes.

3 A. No, she did not indicate that to
4 me.

5 Q. Did she indicate that it was
6 important?

7 A. Yes.

8 Q. Okay. What did she say about
9 that?

10 A. Kathy Patrick understood that
11 the negotiation of a dollar number between
12 AFI and ResCap was going on separately
13 from the discussions over the RMBS
14 settlement. Notwithstanding that, she
15 understood that she had no direct role
16 or -- or standing to bargain for a number
17 there since the number -- since that
18 agreement was between the estate and Ally.
19 She did care about the number and she told
20 me that she cared about the number for the
21 obvious reason that she wanted to maximize
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she
24 expressed an amount that she expected from
25 AFI if she were going to proceed with a

1 TIMOTHY DEVINE

2 the prior appropriate lawful disclosures
3 in the 10-Q.

4 Q. Yeah. And whatever risk you
5 thought you might have in that connection,
6 even if you didn't think there was any,
7 you wanted an answer as to what that risk
8 might be in comparison to another risk.
9 And that risk you said was that will blow
10 the chance to get third-party releases.
11 So my question is, isn't what you wanted
12 to know was whether the third-party
13 releases from a risk standpoint were more
14 valuable than taking the risk of whatever
15 might happen vis-à-vis the SEC or the
16 disclosures that had been made in the --
17 in the 10-Q?

18 MR. PRINCI: Objection to form.

19 Asked and answered.

20 MR. BRYAN: Objection to form.

21 A. No. That's not what I was
22 comparing. I wasn't comparing the risk
23 because we had already fully, lawfully and
24 appropriately made the disclosures.

25 Q. Right.

1 TIMOTHY DEVINE

2 A. That had already been
3 undertaken.

4 Q. You were so confident,
5 Mr. Devine, that you consulted Davis Polk
6 about this very issue, right?

7 MR. BRYAN: Objection to form.

8 Q. Didn't you?

9 MR. BRYAN: You are asking him
10 if he consulted outside attorneys?

11 Q. You consulted not just outside
12 attorneys, you consulted Davis Polk on
13 this exact issue, didn't you?

14 MR. BRYAN: I'm going to
15 instruct the witness not to answer
16 what legal advice he sought from
17 Ally's attorneys.

18 Q. Did you or did you not consult
19 Davis Polk about the risk to AFI of
20 settling -- the risk to AFI in terms of
21 disclosures that were made in the 10-Q by
22 having a settlement of this -- of this
23 magnitude with Ms. Patrick?

24 MR. BRYAN: I'm going to
25 instruct the witness not to answer to

1 TIMOTHY DEVINE

2 the extent you are asking him what
3 legal advice he sought on what topics
4 from an outside attorney for AFI.

5 MR. KAUFMAN: I just want to
6 know whether -- you are not letting
7 him answer on the topic?

8 MR. BRYAN: You are asking him a
9 very specific topic. And I'm
10 instructing the witness not to answer.

11 Q. Did you or did you not seek
12 advice from Davis Polk on AFI's risk for
13 possible securities violations in
14 connection with the 10-Q?

15 MR. BRYAN: Mr. Kaufman, we can
16 do this all day. I'm instructing the
17 witness not to answer.

18 MR. KAUFMAN: Okay. Let's mark
19 as the next exhibit an e-mail chain on
20 May 7th and May 8th. Bates numbers RC
21 9019_000049164 through 66.

22 (9019 Exhibit 144, e-mail chain
23 dated May 7th and May 8th, Bates RC
24 9019_000049164 through 66, marked for
25 identification, as of this date.)

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2 those are in sequence.

3 Q. You are saying there's something
4 peculiar about sending an e-mail at 11:00
5 in the morning?

6 A. No, no. I'm just -- I just lost
7 confidence in the -- in the time, in the
8 various exhibits that you've sent me.
9 Some of it doesn't make sense to me.

10 Q. Is there anything about what I
11 have just shown you among the exhibits
12 where -- in this exhibit where Mr. --
13 where you sent an e-mail at 10:46 a.m. on
14 May 8th, got a response from Mr. Lee on
15 the same day at 11:00 a.m. and then you
16 sent a further e-mail at 11:15, anything
17 suspicious about that?

18 MR. BRYAN: Objection to form.

19 A. In terms of the timing?

20 Q. Yes.

21 A. No, not independently.

22 Q. Okay. Let me show you what's
23 been marked previously as Exhibit 117,
24 which are e-mails between you and
25 Mr. Cancelliere on May 9th, 2012.

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2 Did you send the e-mail to
3 Mr. Cancelliere at 5:50 a.m. on May 9th?

4 A. I don't remember what time I
5 sent it but it looks here like an e-mail
6 from me to Jeff Cancelliere.

7 Q. You sent that e-mail, didn't
8 you?

9 A. It looks like it.

10 Q. And you wrote to
11 Mr. Cancelliere, "What is the defect rate
12 at 8.7 billion according to her
13 severities, etc., and according to ours."

14 Do you see that?

15 A. Yes.

16 Q. Why did you want that
17 information?

18 A. Well, let's start with the
19 question which distinguishes her
20 severities and ours. Because as I
21 mentioned earlier, Kathy Patrick's
22 formulas applied different severities to
23 the collateral in the pools that underlay
24 the various securitizations. And if you
25 apply a more aggressive severity, meaning

1 TIMOTHY DEVINE

2 that loans are more likely to fail
3 according to whatever macroeconomic or
4 otherwise or other stresses you put
5 against it, your defect rate would be
6 lower if you -- if you isolated two of the
7 more significant variables that arrive at
8 an outcome which -- with regard to total
9 exposure.

10 And so it was important to
11 understand the defect rate at a couple of
12 different severities.

13 Q. Where did the \$8.7 billion
14 number come from in your e-mail to
15 Mr. Cancelliere?

16 A. Unfortunately, I don't have a
17 timeline in front of me with regard to the
18 various communications with the parties.
19 But at some point it must have been
20 communicated to me by either Gary Lee or
21 Kathy Patrick that they were at least
22 talking about a valuation figure for the
23 allowed claim of this class at
24 \$8.7 billion.

25 Q. And did you want to ascertain

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2 MR. PRINCI: Objection as to
3 form.

4 A. I don't remember whether I
5 thought that there might be a risk that
6 the settlement would fall apart or not.

7 Q. Did you consider what you would
8 do for AFI if Mr. Lee bought and insisted
9 on a greater contribution from AFI?

10 MR. PRINCI: Objection as to
11 form.

12 MR. BRYAN: Object to form.

13 A. If you are asking me for my
14 mental impression as to what contingencies
15 might occur in the event that ResCap and
16 Kathy Patrick didn't settle, I'm not going
17 to answer that question as it would
18 reflect attorney-client privileged
19 information. And probably attorney work
20 product.

21 Q. Without telling me what it was
22 that you considered just tell me whether
23 you considered what might happen if
24 Mr. Lee balked as a result of what you
25 said to him in this e-mail and insisted on

1 TIMOTHY DEVINE

2 describe as the RMBS or put back
3 litigation, and I'd include in that
4 definition both the monoline claims that
5 were in litigation and any put back claims
6 that -- that might have been asserted?

7 A. The first substantial contact I
8 had within my job duties with the mortgage
9 business was in the summer of 2010 when
10 the FHFA propounded 64 subpoenas across
11 the industry and I was asked to coordinate
12 the response to the subpoenas that were
13 issued to the company.

14 Q. Did you supervise outside
15 counsel with respect to the monoline
16 litigation either MBIA or FGIC litigation?

17 A. Have I done that?

18 Q. Yes.

19 A. Yes.

20 Q. When you were representing AFI
21 from the time of the October letter that
22 Ms. Patrick sent to the signing of the
23 settlement agreement, were you solely
24 representing AFI or were you also
25 representing ResCap during that time

1 TIMOTHY DEVINE

2 period from October forward?

3 A. Well, we should probably be
4 careful with regard to what you mean by
5 representing. The -- as I recall, the
6 first communication from Kathy Patrick
7 came in to Bill Solomon in his capacity as
8 general counsel of Ally Financial, Inc.
9 He responded by indicating to Ms. Patrick
10 that Ally Financial, Inc. did not have
11 exposure of the variety that she wanted to
12 talk about settling. And referred her to
13 Tammy Hamzephour, general counsel for
14 ResCap.

15 What -- my participation in
16 connection with meeting with Ms. Patrick,
17 I think Mr. Sheeren was there at the first
18 meeting in Minnesota, I don't recall
19 exactly. But in any event, I was there in
20 my capacity as chief counsel for
21 litigation for ResCap, given that
22 Ms. Patrick purported to represent clients
23 who purported to have rep and warrant
24 essentially contract claims against the
25 contracting parties, all of whom were

1 TIMOTHY DEVINE

2 within the ResCap structure and none of
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,
5 if I understand, it took place sometime
6 between October, November, December,
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took
9 place. I think we have had some testimony
10 on it today. If there's a document we
11 could refer to it.

12 Q. I'm going to try to do this
13 without -- without taking the time to go
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were
17 representing ResCap in what I will call
18 the Kathy Patrick negotiations with
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would
23 call them negotiations. So I think that
24 term is going to end up being understood
25 in a number of different ways. What --

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2 what went on for some period of time with
3 Kathy Patrick was an exchange of
4 communications designed to understand the
5 nature of her representation, who her
6 clients were, what kind of claims they
7 were purporting to make. And so to the
8 extent that that is a prelude to or a part
9 of or a type of negotiation, yes. So for
10 a period of time I was supporting those
11 discussions in my capacity in support of
12 the ResCap entities.

13 Q. You understood that Ms. Patrick
14 was asserting that ResCap owed her clients
15 a substantial amount of money?

16 A. Yes.

17 Q. So you -- did she at some
18 point -- what was the first, her first
19 demand or her first claim that she made
20 against ResCap, do you recall?

21 A. As I sit here today, I don't
22 recall her first demand.

23 Q. Did she ask for \$10 billion?

24 A. Now, you are talking about once
25 the discussions started to take place for

1 TIMOTHY DEVINE

2 a compromise of those claims within the
3 context of a ResCap filing.

4 Q. At any point?

5 A. Yeah. So I believe that she did
6 at one point in the negotiations but now
7 this was within the context of a potential
8 ResCap filing at which time I was not
9 representing ResCap in connection with a
10 potential resolution of claims against the
11 ResCap estate.

12 Q. Okay. So if I understand your
13 testimony correctly, you initially started
14 out representing ResCap and then at some
15 point you were no longer representing
16 ResCap. Could you explain to me when your
17 role and responsibility changed?

18 A. I think you've slightly
19 misunderstood but I don't blame you. At
20 some point -- because it wasn't entirely
21 clear, right. At some point -- look, when
22 we started the discussions with Kathy
23 Patrick, I was representing the ResCap
24 entities in connection with the assertion
25 that they had -- that Kathy Patrick did

1 TIMOTHY DEVINE

2 represent clients who did or did not under
3 the relevant documents have contract
4 claims against ResCap. And that was
5 natural because I had been dealing with
6 that kind of assertion of claim, although
7 not by investors and trustees but rather
8 by the monolines against the ResCap
9 entities theretofore.

10 At some point ResCap began to
11 consider a Chapter 11 restructuring. I
12 did not represent ResCap at all in
13 connection with this Chapter 11
14 restructuring, unless you consider the
15 nature of our discussions according to the
16 common interest or joint defense privilege
17 in which case that's why I don't blame you
18 for misunderstanding the nature of what I
19 just talked about. But so, yes, I did
20 represent ResCap in connection with the
21 sort of bilateral claim of Kathy Patrick's
22 clients against the ResCap entities and
23 rep and warrant. Once the context of the
24 restructuring became a part of that
25 dialogue, ResCap was represented by Gary

1 TIMOTHY DEVINE

2 Lee of MoFo. I never represented ResCap
3 on a bankruptcy related resolution. At
4 least unless you -- as I say, I did
5 continue to advise ResCap in connection
6 with plain sort of legal analysis on rep
7 and warrant issues but not so much as
8 would be implicated in connection with the
9 filing.

10 Q. Thank you for that and let me
11 try to make sure I understand correctly.
12 To try to summarize. In the beginning of
13 from October for some period of time in
14 the initial stages that you've described
15 as essentially information gathering
16 stages, you were representing ResCap. By
17 the end, by the April and May time period
18 that we have looked at a variety of
19 e-mails by that time period you were no
20 longer representing ResCap, you would have
21 solely been representing AFI, is that
22 correct, am I bracketing the change in
23 role correctly?

24 A. No. I think you are missing one
25 part of it. But it's -- it's

1 TIMOTHY DEVINE

2 directionally correct. So first of all,
3 the difficulty with the word
4 "representing" given that there were no
5 pleadings in the matter, nobody appeared
6 as counsel of record, et cetera. So let's
7 for a moment agree that the term
8 "representing" is somewhat subject to a
9 variety of definitions and understandings.

10 Q. I would use representing as
11 representing in the context of the
12 negotiations. Representing a client, be
13 it AFI or ResCap, in dealing with
14 Ms. Patrick or the Talcott Franklin group
15 that came in at the end. If you
16 understand that.

17 A. Uh-hum. So there -- there were
18 certainly throughout the relevant period
19 transactions and discussions,
20 communications -- transactions meaning
21 information exchange, et cetera, between
22 the ResCap parties and Kathy Patrick on
23 the one hand or Talcott Franklin on the
24 other, which I assisted and advised ResCap
25 in accomplishing.

1 TIMOTHY DEVINE

2 At the same time I was
3 representing -- I was chief counsel to
4 Ally as well so of course I was advising
5 both ResCap and Ally in connection with
6 the -- the claims that Kathy Patrick
7 purported to make on behalf of those
8 clients.

9 Q. When you were representing
10 ResCap in the initial stages of this
11 discussions and negotiations with
12 Ms. Patrick, who did you report to at
13 ResCap?

14 A. I certainly included Tammy
15 Hamzephour in any discussions. She was
16 general counsel to the ResCap entities. I
17 had conversations with and gave advice to
18 and took input from a variety of business
19 clients.

20 Q. So in addition to Ms. Hamzephour
21 you spoke to other not -- not in-house
22 counsel but other business representatives
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

1 TIMOTHY DEVINE

2 in the initial stages?

3 A. Sure. So but in what capacity,
4 as sort of an information source, as a --
5 as a normal business client or in sort of
6 a decision-making --

7 Q. In any capacity you were
8 representing them in the initial stages of
9 these discussions and negotiations with
10 Ms. Patrick.

11 A. I had communications with Tom
12 Marano, with Jim Whitlinger, with Jeff
13 Blashco (ph), Jeff Cancelliere. This was
14 my -- as in-house counsel I had naturally
15 the information and expertise relating to
16 the rep and warrant claims that Kathy
17 Patrick and her clients purport to make.
18 It was all contained within ResCap. That
19 was my resource base, that was my client
20 base, that's where the decision-making
21 authority with regard to whether or not to
22 engage in real settlement discussions or
23 not. That's -- that's where all that took
24 place with the ResCap client.

25 Q. Why was it decided at some point

1 TIMOTHY DEVINE

2 that you would no longer represent ResCap
3 and solely be representing AFI?

4 A. I'm going to answer your
5 question without revealing privileged
6 communications. At some point it was
7 determined that people performing
8 functions like the one I was performing,
9 which spanned across -- across the Ally,
10 the nondebtor to the debtor line, should
11 reorient so that they were aligned with
12 one or the other. And that was a process
13 that took place across the various
14 business units and functions to the extent
15 that there was any overlap.

16 Q. Do you know when that was?

17 A. With regard to my own role?

18 Q. Yes.

19 A. I don't know exactly when it
20 was. I understand you would think I would
21 have an exact date and hour. I don't.
22 But because -- the reason I don't is
23 because it's probably accurate to say that
24 in some measure I continued to be a
25 resource for the ResCap client even as

1 TIMOTHY DEVINE

2 they retained MoFo to represent them in
3 connection with rep and warrant and in
4 connection with rep and warrant in a
5 bankruptcy context, simply because I had a
6 great deal of experience in connection
7 with the claims that were being asserted
8 against the estate and because, as you
9 know, many of us believed that we had a
10 common interest in joint defense. And in
11 fact at some point a document was executed
12 to that effect.

13 So it's not a straight line,
14 drop dead date after which I was no longer
15 providing advice to either a client of
16 sorts or a co, sort of a party subject to
17 a common defense or joint defense
18 agreement.

19 Q. I think I understand. To your
20 knowledge, when did ResCap become
21 insolvent, and I would define that on a
22 balance sheet basis when its total assets
23 were less than its total liabilities?

24 A. I don't know.

25 MR. BRYAN: Objection.

C E R T I F I C A T I O N

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, ERICA L. RUGGIERI, RPR and a
Notary Public within and for the State
of New York, do hereby certify:

That I reported the proceedings
in the within-entitled matter, and
that the within transcript is a true
record of such proceedings.

I further certify that I am not
related by blood or marriage, to any
of the parties in this matter and
that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 20th day
of November, 2012.

ERICA L. RUGGIERI, RPR